

## § 123.4

when SBA determines that the late filing resulted from substantial causes beyond the control of the applicant.

[61 FR 3304, Jan. 31, 1996, as amended at 64 FR 13667, Mar. 22, 1999; 67 FR 64518, Oct. 21, 2002; 71 FR 63676, Oct. 31, 2006; 71 FR 75409, Dec. 15, 2006; 73 FR 54675, Sept. 23, 2008]

### **§ 123.4 What is a disaster area and why is it important?**

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions, provided, however, that with respect to major disasters which authorize public assistance only, SBA shall not make economic injury disaster loans in counties contiguous to the disaster area. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical and economic injury assistance. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

[61 FR 3304, Jan. 31, 1996, as amended at 67 FR 64519, Oct. 21, 2002]

### **§ 123.5 What kinds of loans are available?**

SBA offers three kinds of disaster loans: physical disaster home loans, physical disaster business loans, and economic injury business loans. SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

### **§ 123.6 What does SBA look for when considering a disaster loan applicant?**

There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit

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and character. SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any other disposition of assets owned by you. SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service that has been determined to be obscene by a court.

### **§ 123.7 Are there restrictions on how disaster loans can be used?**

You must use disaster loans to restore or replace your primary home (including a mobile home used as a primary residence) and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future similar disasters.

### **§ 123.8 Does SBA charge any fees for obtaining a disaster loan?**

SBA does not charge points, closing, or servicing fees on any disaster loan. You will be responsible for payment of any closing costs owed to third parties, such as recording fees and title insurance premiums. If your loan is made in participation with a financial institution, SBA will charge a guarantee fee to the financial institution, which then may recover the guarantee fee from you.

### **§ 123.9 What happens if I don't use loan proceeds for the intended purpose?**

(a) When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication.

Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered